

office) within 20 days following the required newspaper publication.

**§ 303.87 Delegation of authority.**

(a) Authority is delegated to the Director and the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to issue a written notice of the FDIC's intent not to disapprove an acquisition of control of an insured state nonmember bank.

(b) The authority delegated by paragraph (a) of this section shall include the power to:

(1) Act in situations where information is submitted on acquisitions arising out of events beyond the person's control, as set forth in § 303.83(b);

(2) Extend notice periods;

(3) Determine whether a notice should be filed under section 7(j) of the Act (12 U.S.C. 1817(j)) by a person acquiring less than 25 percent of any class of voting shares of an insured state nonmember bank; and

(4) Delay or waive publication, waive or shorten the public comment period, or act on a proposed acquisition of control prior to the expiration of the public comment period, as provided in §§ 303.86(a)(3) and (4).

(c) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to disapprove an acquisition of control of an insured state nonmember bank.

**Subpart F—Change of Director or Senior Executive Officer**

**§ 303.100 Scope.**

This subpart sets forth the circumstances under which an insured state nonmember bank must notify the FDIC of a change in any member of its board of directors or any senior executive officer and the procedures for filing such notice, as well as applicable delegations of authority. This subpart implements section 32 of the FDI Act (12 U.S.C. 1831i).

**§ 303.101 Definitions.**

For purposes of this subpart:

(a) *Director* means a person who serves on the board of directors or

board of trustees of an insured state nonmember bank, except that this term does not include an advisory director who:

(1) Is not elected by the shareholders;

(2) Is not authorized to vote on any matters before the board of directors or board of trustees or any committee thereof;

(3) Solely provides general policy advice to the board of directors or board of trustees and any committee thereof; and

(4) Has not been identified by the FDIC as a person who performs the functions of a director for purposes of this subpart.

(b) *Senior executive officer* means a person who holds the title of president, chief executive officer, chief operating officer, chief managing official (in an insured state branch of a foreign bank), chief financial officer, chief lending officer, or chief investment officer, or, without regard to title, salary, or compensation, performs the function of one or more of these positions. *Senior executive officer* also includes any other person identified by the FDIC, whether or not hired as an employee, with significant influence over, or who participates in, major policymaking decisions of the insured state nonmember bank.

(c) *Troubled condition* means any insured state nonmember bank that:

(1) Has a composite rating, as determined in its most recent report of examination of 4 or 5 under the Uniform Financial Institutions Rating System (UFIRS), or in the case of an insured state branch of a foreign bank, an equivalent rating; or

(2) Is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance; or

(3) Is subject to a cease-and-desist order or written agreement issued by either the FDIC or the appropriate state banking authority that requires action to improve the financial condition of the bank or is subject to a proceeding initiated by the FDIC or state authority which contemplates the issuance of an order that requires action to improve the financial condition of the bank, unless otherwise informed in writing by the FDIC; or

(4) Is informed in writing by the FDIC that it is in troubled condition

for purposes of the requirements of this subpart on the basis of the bank's most recent report of condition or report of examination, or other information available to the FDIC.

**§ 303.102 Filing procedures and waiver of prior notice.**

(a) *Insured state nonmember banks.* An insured state nonmember bank shall give the FDIC written notice, as specified in paragraph (c)(1) of this section, at least 30 days prior to adding or replacing any member of its board of directors, employing any person as a senior executive officer of the bank, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive officer position, if:

(1) The bank is not in compliance with all minimum capital requirements applicable to the bank as determined on the basis of the bank's most recent report of condition or report of examination;

(2) The bank is in troubled condition; or

(3) The FDIC determines, in connection with its review of a capital restoration plan required under section 38(e)(2) of the FDI Act (12 U.S.C. 1831o(e)(2)) or otherwise, that such notice is appropriate.

(b) *Insured branches of foreign banks.* In the case of the addition of a member of the board of directors or a change in senior executive officer in a foreign bank having an insured state branch, the notice requirement shall not apply to such additions and changes in the foreign bank parent, but only to changes in senior executive officers in the state branch.

(c) *Waiver of prior notice—(1) Waiver requests.* The FDIC may permit an individual, upon petition by the bank to the appropriate regional director (DOS), to serve as a senior executive officer or director before filing the notice required under this subpart if the FDIC finds that:

(i) Delay would threaten the safety or soundness of the bank;

(ii) Delay would not be in the public interest; or

(iii) Other extraordinary circumstances exist that justify waiver of prior notice.

(2) *Automatic waiver.* In the case of the election of a new director not proposed by management at a meeting of the shareholders of an insured state nonmember bank, the prior 30-day notice is automatically waived and the individual immediately may begin serving, provided that a complete notice is filed with the appropriate regional director (DOS) within two business days after the individual's election.

(3) *Effect on disapproval authority.* A waiver shall not affect the authority of the FDIC to disapprove a notice within 30 days after a waiver is granted under paragraph (c)(1) of this section or the election of an individual who has filed a notice and is serving pursuant to an automatic waiver under paragraph (c)(2) of this section.

(d)(1) *Content of filing.* The notice required by paragraph (a) of this section shall be filed with the appropriate regional director (DOS) and shall contain information pertaining to the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted, as prescribed in the designated interagency form which is available from any FDIC regional office. The regional director or his or her designee may require additional information.

(2) *Modification.* The FDIC may modify or accept other information in place of the requirements of paragraph (d)(1) of this section for a notice filed under this subpart.

**§ 303.103 Processing.**

(a) *Processing.* The 30-day notice period specified in § 303.102(a) shall begin on the date substantially all information required to be submitted by the notificant pursuant to § 303.102(c)(1) is received by the appropriate regional director (DOS). The regional director shall notify the bank submitting the notice of the date on which the notice is accepted for processing and of the date on which the 30-day notice period will expire. If processing cannot be completed within 30 days, the notificant will be advised in writing, prior to expiration of the 30-day period,